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such testator, and no provision should have been made for such contingency, the issue of such devisee shall take the devise. The testator, after making several dispositions, devised the remainder of his estate to his "children." A grandchild, to whom a specific devise was made by name, but whose mother was a daughter of the testator who had died before the will was made, claimed to inherit her mother's share under a residuary devise to the "children" of testator. *Held*, that she could recover under the above statute.

Since a will speaks as of the time of the testator's death, the members of the class are *prima facie* to be determined at the death of the testator. *Ruggles v. Randall* (1897) 70 Conn. 44. *Richardson v. Willis* (1895) 163 Mass. 130; *Buzby v. Roberts* (1895) 53 N. J. Eq. 566. The English Statute to prevent lapses is construed to apply only to a devise or legacy to a person named and not to a class, irrespective of whether the death of the member of the class occurs before, or after the date of the will. *Olney v. Bates* (1855) 3 Drew. 319; *Re Harvey* [1893] 1 Ch. 537. But it has been generally held in the United States that statutory provisions to prevent lapses, apply to a devise or legacy to a class. *Strong v. Smith* (1891) 84 Mich. 567; *In re Bradley's Estate* (1895) 166 Pa. St. 300; *Jones v. Hunt* (1896) 96 Tenn. 369. However, this is not an unyielding rule, and the will itself may indicate a contrary intention, and if so, this intent will be adopted and enforced. *In re Swenson's Estate* (1893) 55 Minn. 300; *Bailey v. Brown* (1897) 19 R. I. 669. The question resolves itself into this: Does the statute apply where the devise is to a class, one of the members of which is dead at the time the will is made, so that the heirs of the deceased member may take? The decisions are irreconcilable. Those holding the affirmative are: *Bray v. Pullen* (1892) 84 Me. 185; *Moses v. Allen* (1889) 81 Me. 268; *Jamison v. Hay* (1870) 46 Mo. 546; *Wildberger v. Cheek's Executors* (1897) 94 Va. 517. In other jurisdictions statutes like that in the principal case are held not to apply where the devisee is dead at the time of the execution of the will. *White v. Institute* (1898) 171 Mass. 84; *Lindsey v. Pleasants* (1846) 39 N. C. 320; *Tolbert v. Burns* (1888) 82 Ga. 213. It is believed that the weight of authority is in favor of the proposition that a bequest to a class does not include persons dead before the making of the will, who, had they survived until that time, would have fallen within the description of that class, unless there is something in the will, or surrounding circumstances to show a different intent on the part of the testator. Inasmuch as the plaintiff in the principal case was provided for elsewhere in the will, it is questionable if the testator intended to have her take again under the devise to the children.

L. J. N.

WILLS—PRESUMPTION—CONSTRUCTION.—*DES BOEUF V. DES BOEUF* (1916) 113 N. E. (Ill.) 900.—The third clause of a will read: "It is my will that the balance of my estate, both real and personal, all descend to my wife, Julia, and my son, Felix, as the statutes of the state of Illinois provide." *Held*, that it must be presumed that the testator did not intend to die intestate as to any property and that the word "descend" cannot be taken

in its usual technical meaning; but the will must be construed as declaring that, aside from small bequests to grandchildren, the property should be divided according to the statutes of distribution, so that the wife would take one-third and the son the remainder of the personalty, together with the realty subject to the dower and homestead rights of the wife.

There is a presumption, unless it clearly appears to the contrary, that the testator wished to dispose of all his property. *King v. King* (1898) 168 Ill 273; *In re Lloyds Estate* (1899) 188 Pa. St. 451. The word "descend" as distinguished from "purchase" is used in its technical sense to describe the devolution of realty to the heirs at law by operation of law. See *Tichenor v. Brewer's Executor* (1897) 98 Ky. 349; *Potts v. Kline* (1896) 174 Pa. St. 513. In the principal case the testator apparently had two things in mind: (1) that the widow and son should take all the residuary estate; (2) that the widow should take her part which belonged to her as a widow, and that the son should take his part as if he were the only heir thereto, as both would have done if no will had been made. The words "descend," "inherit" and "inheritance" are frequently given an expanded meaning by legislatures and applied to personalty. *Roundtree v. Russell* (1895) 11 Ind. App. 522. The term "descend" has been construed as legatory, giving a granddaughter a vested remainder. *Timberlake v. Parish's Executor* (1838) 5 Dana (Ky.) 345. A widow has been allowed to take as a "right heir" under a statute which created a surviving wife a statutory heir. *Peabody v. Cook* (1909) 201 Mass. 212. In several English cases, however, the phrase "right heirs," has been construed to mean heirs at common law. *Young v. Gibbons* [1902] 1 Ch. 336; *De Beauvoir v. De Beauvoir* (1870) 3 H. L. Cas. 524. If the intention is manifest from the intrinsic and such extrinsic evidence as can be brought in, the property will pass. *Patch v. White* (1886) 117 U. S. 210; *Posley v. Newton* (1908) 199 Mass. 421. The written expression must express the testator's intention approximately although not necessarily with exactness. The court in the principal case seems to have adopted a common sense view.

G. S., JR.